

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

OP.No. 27692 of 2002(V)

PETITIONER:

1. THE SENIOR DIVISIONAL ENGINEER, RAILWAY
DIVISION. OFFICE, PALAKKAD.

2. THE ASSISTANT DIVISIONAL ENGINEER,
RAILWAY, KANNUR.

BY ADV. SRI.ALEXANDER THOMAS, SC,RAILWAYS

RESPONDENTS:

1. THE SUB DIVISIONAL MAGISTRATE,
TALASSERRY.

2. C.JAYASOORYAN, S/O.ANANDAN, AGED 33
YEARS, RESIDING AT CHALLAYIL HOUSE,
NEW MAHE GRAMA PANCHAYAT. POST PERINGADI -
673312.

3. NEW MAHE GRAMA PANCHAYATH, P.O.NEW MAHE
REPRESENTED BY ITS SECRETARY.

4. THE SUB-INSPECTOR OF POLICE,
THALASSERI POLICE STATION,
THALASSERI.

BY ADV. SRI.NAGARAJ NARAYANAN
SRI.NAIR AJAY KRISHNAN
SRI.RAJAN VELLOTH
SRI.SAIJO HASSAN
SRI.P.M.PAREETH
GOVERNMENT PLEADER SRI.V.T.K.MOHANAN.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 17/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON C.M.P.NO.47092/02 IN O.P.NO.27692/02

DISMISSED

17.8.2007.

SD/- KURIAN JOSEPH, JUDGE.

A P P E N D I X

PETITIONER'S EXHIBITS :

EXT.P1 : TRUE COPY OF MP 76/02 DT. 12.7.2002 FILED BY THE SECOND RESPONDENT BEFORE THE FIRST RESPONDENT.

EXT.P2 : TRUE COPY OF THE PRELIMINARY ORDER IN M.P.76/02 DT. 12.7.2002 PASSED BY THE FIRST RESPONDENT.

EXT.P3 : TRUE COPY OF THE COUNTER STATEMENT DT. 2.8.2002 FILED BY THE PETITIONERS BEFORE THE FIRST RESPONDENT.

EXT.P4 : TRUE COPY OF REQUEST DT. 28.2.2001 MADE BY THE THIRD RESPONDENT BEFORE THE FIRST PETITIONER.

EXT.P5 : TRUE COPY OF THE LETTER OF REFUSAL DT. 28.3.2001 GIVEN BY THE PETITIONERS TO EXT.P4 REQUEST OF THIRD RESPONDENT PANCHAYAT.

EXT.P6 TRUE COPY OF THE APPLICATION DT. 8.6.2001 PREFERRED BY THE THIRD RESPONDENT BEFORE THE PETITIONERS.

EXT.P7 TRUE COPY OF ROUGHT SKETCH OF THE SITE/LOCATION.

EXT.P8 TRUE COPY OF COMPLAINT DT. 25.7.2002 FILED BY THE PETITIONERS BEFORE THE 4TH RESPONDENT.

RESPONDENTS' EXHIBITS :

EXT.R2A TRUE COPY OF THE ROUGHT SKETCH SHOWING THE LIE OF THE PUBLIC PATHWAY.

TGS

KURIAN JOSEPH J.

O.P. No.27692 of 2002

Dated 17th August, 2007.

J U D G M E N T

This writ petition is at the instance of the Railways. They are aggrieved by the proceedings initiated by the first respondent Sub Divisional Magistrate under Section 133 of the Code of Criminal Procedure, on Ext.P1 complaint filed by the second respondent. The second respondent filed Ext.P1 complaining of unlawful obstruction caused to the pathway allegedly used by the public. There is no dispute that the pathway is in the property of Railways. According to the Railways, they have planted the posts only to prevent encroachment upon the Railway property. The contention of the second respondent as well as the Panchayat is that there was pathway used by the public. It is seen that they have sought lease of the property from the Railways, as can be seen from Ext.P4. That request has been denied by Ext.P5. Thus there cannot be any dispute that the property is that of Railways. The jurisdictional pre-condition for exercise of power under Section 133 of the Code by the District Magistrate/Sub Divisional Magistrate is unlawful obstruction from

using a public place or any way which is to be lawfully used by the public. So long as there is no dispute that the property is that of Railways, in case the second respondent claims the use of the way, it is for them either to approach the Railways or seek the remedy before the civil court. In the absence of jurisdictional precondition for exercise of power under Section 133, the first respondent cannot initiate proceedings on Ext.P1 complaint. I quash Ext.P1 and the proceedings initiated by the first respondent on Ext.P1.

The writ petition is disposed of as above.

KURIAN JOSEPH, JUDGE.

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KURIAN JOSEPH, J.

O.P. NO. 27692 OF 2002

J U D G M E N T

Dated 17th August, 2007.